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ELECTRONICALLY FILED

Attorneys for Plaintiff Energy Brands Inc. d/b/a Glacéau

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>8-21-08</u>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
ENERGY BRANDS INC. d/b/a GLACÉAU, :

Plaintiff, :

v. :

NATIONAL BEVERAGE CORP., :

Defendant. :

08 Civ. 4909 (JSR)

----- X

NOTICE OF VOLUNTARY DISMISSAL

WHEREAS, Energy Brands Inc. d/b/a Glacéau ("Glacéau") commenced the above-entitled action against National Beverage Corp. ("National") by filing a Complaint on May 28, 2008, alleging, *inter alia*, that the trade dress of National's ÀSANTÉ product infringes and dilutes the trade dress of Glacéau's VITAMINWATER® product; and

WHEREAS, on June 2, 2008, Glacéau filed an Amended Complaint in the above-entitled action adding allegations, *inter alia*, that the use of the phrase "VITAMIN

WATER” on the label of National’s ÀSANTÉ product infringes and dilutes the VITAMINWATER[®] trademark; and

WHEREAS, on June 4, 2008, Glacéau filed a motion to dismiss the declaratory judgment complaint filed by National against Glacéau in the United States District Court for the Southern District of Florida, captioned *National Beverage Corp. v. Energy Brands, Inc. d/b/a Glaceau*, No. 08-60792-CIV-ALTONAGA/BROWN (S.D. Fla.) (the “Florida Action”), or, alternatively, to stay or transfer the Florida Action; and

WHEREAS, on July 9, 2008, at the hearing on Glacéau’s motion to dismiss the Florida Action, National represented to the Court in the Florida Action that it was going to make a change to its ÀSANTÉ trade dress to the trade dress shown in Exhibit A (the “New ÀSANTÉ Trade Dress”); and

WHEREAS, the New ÀSANTÉ Trade Dress does not include the infringing and diluting reference “VITAMIN WATER”; and

WHEREAS, the parties have been engaged in settlement discussions in light of the representations National made on July 9, 2008 concerning the New ÀSANTÉ Trade Dress; and

WHEREAS, on August 14, 2008, the Court in the Florida Action denied Glacéau’s motion;

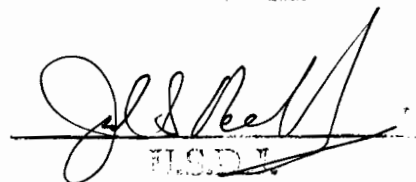
NOW, THEREFORE, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i),
Glacéau hereby issues and files this Notice of Voluntary Dismissal dismissing the above-
entitled action without prejudice.

Dated: August 18, 2008
New York, New York

DEBEVOISE & PLIMPTON LLP

By: /s/ David H. Bernstein
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*Attorneys for Plaintiff Energy Brands Inc.
d/b/a Glacéau*


8-20-08

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 18, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel or parties of record on the below service list.

/s/ David H. Bernstein
David H. Bernstein

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EXHIBIT A

[illegible]